

REMARKS

This paper is submitted in response to the pending Office Action mailed on August 18, 2005. Because this Response is submitted with a certificate of mailing in compliance with 37 C.F.R. §1.8 on or before the shortened statutory period for reply set to expire on **November 18, 2005**, this amendment is timely filed.

I. STATUS OF THE CLAIMS

Claims 1 to 45 are pending in this application, with claims 17 to 36 being withdrawn from consideration per the Restriction Requirement mailed on June 11, 2005. By this Response, claims 1, 14, 37, 41 and 42 have been amended, claims 43 to 45 have been canceled without disclaimer, and no new claims have been added. Thus, upon entrance of this Response Claims 1 to 42 are pending and at issue. Applicant submits that no new matter has been introduced by this Response.

Applicant submits that no additional fees are due in connection with this Response, however, please charge **Deposit Account No. 02-1818** for any fees deemed owed.

II. DRAWING OBJECTIONS

The drawings are objected to under 37 C.F.R. §1.83(a) as failing to show every feature of the invention specified in the claims. In light of the amendments to claims 1 and 37 and the cancellation of claim 43, Applicant submits that this objection has been rendered moot. Withdrawal and reconsideration of these objections are respectfully requested.

III. CLAIM REJECTIONS

Claims 37 to 41, 44 and 45 have been rejected under 35 U.S.C. §101 as directed to non-statutory subject matter. Claims 1 to 16 and 37 to 45 have been rejected under 35 U.S.C. §102(b) as anticipated¹ by U.S. Patent No. 5,725,160 to

¹ "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). "The identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). See MPEP § 2131.

Harper et al. (hereinafter “*Harper*”) or, in the alternative, under 35 U.S.C. §103(a) as obvious² over *Harper*.

A. REJECTION UNDER 35 U.S.C. §101

Applicant respectfully traverses the rejections to Claims 37 to 41, 44 and 45 as directed to non-statutory subject matter. In particular, Claim 37 has been amended and Claims 44 and 45 have been canceled, thereby rendering the pending rejections moot. Because independent Claim 37 recites statutory subject matter in compliance with 35 U.S.C. §101, Applicant submits that dependent Claims 38 to 41 are also in acceptable form. Withdrawal and reconsideration of these rejections are respectfully requested.

B. REJECTIONS UNDER 35 U.S.C. §§102 AND 103

Applicant respectfully traverses the rejections to Claims 1 to 16 and 37 to 45 as anticipated and/or rendered obvious by *Harper*. In particular, amended independent Claims 1, 37 and 42 recite, in relevant part, a material hopper configured to carry a vertically aligned augur. Moreover, Claim 42 further recites that the vertically aligned augur is a spiral augur.

Harper does not disclose, teach or even suggest a substantially vertically aligned augur as recited, at least in part, by Claims 1 to 16 and 37 to 41, much less a substantially vertically aligned spiral augur as recited by Claim 42. *Harper* simply discloses a chip blower apparatus that includes a horizontally aligned augur 18 positioned within the lower apex 16 or bottom of a hopper 12. In other words, when aggregate material is loaded into the hopper, gravity urges the material to flow towards the bottom or lower apex and into contact with the horizontally aligned augur. Thus, the chip blower of *Harper* is primarily gravity fed until the aggregate material makes its way under the influence of pressure and time towards the horizontal augur.

² To establish a *prima facie* case of obviousness, three basic criteria must be met.:

- (a) First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings.
- (b) Second, there must be a reasonable expectation of success.
- (c) Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.

The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). See MPEP §2143 - §2143.03 for decisions pertinent to each of these criteria.

Because the chip blower of *Harper* does not disclose, or even suggest, a substantially vertically aligned augur of any kind, *Harper* cannot anticipate the invention recited in Claims 1 to 16 and 37 to 45. Similarly, because *Harper* fails to teach or suggest a substantially vertically aligned augur, much less a substantially vertically aligned spiral augur, no modification of *Harper* would result in the claimed invention. Moreover, *Harper* does not recognize the performance advantages realized by utilizing a substantially vertically aligned augur to drive and force aggregate material within the hopper towards a blower unit as opposed to the jam-prone gravity fed system disclosed at col. 4, lines 45 to 52 and shown in FIGS. 1, 3 and 5. Because of this failure to recognize the problem addressed and solved by the invention recited in Claims 1 to 16 and 37 to 45, *Harper* does not provide the necessary suggestion or motivation to modify the disclosed gravity fed horizontal augur system into a substantially vertically aligned augur system as recited by the claims. For all of these reasons, Applicant submits that *Harper* does not provide a proper basis for establishing a *prima facie* case of obviousness. Thus, Claims 1 to 16 and 37 to 45 are patentable over any modification or combination of *Harper*. Withdrawal and reconsideration of these rejections are respectfully requested.

IV. CONCLUSION

For the foregoing reasons, Applicants respectfully request withdrawal of the pending rejections and submit that the above-identified patent application is now in condition for allowance and earnestly solicits reconsideration of same. The Examiner is respectfully requested to telephone the undersigned if he can assist in any way in expediting prosecution of this application.

Respectfully submitted ,
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